

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FREDDIE LEE GREEN,	}	Case No. CV 08-6391 DOC(JC)
Petitioner,		(PROPOSED)
v.		ORDER ADOPTING FINDINGS,
LARRY SMALL,		CONCLUSIONS, AND
Respondent.	}	RECOMMENDATIONS OF
	}	UNITED STATES MAGISTRATE
	}	JUDGE

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Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus by a Person in State Custody (the "Petition"), and all of the records herein, including respondent's Motion to Dismiss the Petition ("Motion to Dismiss"), the attached Report and Recommendation of United States Magistrate Judge ("Report and Recommendation"), and petitioner's objections to the Report and Recommendation ("Objections"). The Court has further made a *de novo* determination of those portions of the Report and Recommendation to which objection is made. The Court concurs with and adopts the findings, conclusions, and recommendations of the United States Magistrate Judge and overrules the Objections.

In the Objections, petitioner, among other things: (1) clarifies that he intended the Petition to raise the claims contained in an attached proposed state

1 petition which petitioner unsuccessfully attempted to file with the California  
2 Supreme Court (see Report and Recommendation at 2 n.2); (2) contends that he is  
3 not required to exhaust his "execution of sentence" claim; and (3) seeks to stay his  
4 sentencing claims while he exhausts his other claims. (Objections at 2). Petitioner  
5 is incorrect in his assertion that he is not required to exhaust all of his claims. See  
6 Report and Recommendation at 4-6. As discussed in the Report and  
7 Recommendation, all of petitioner's claims are unexhausted. Id. Once a court  
8 determines that a habeas petition contains only unexhausted claims, it may dismiss  
9 the petition for failure to exhaust. Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th  
10 Cir. 2006). Accordingly, petitioner's request to stay is denied.

11 IT IS ORDERED that: (1) the Motion to Dismiss be granted to the extent it  
12 seeks dismissal of the Petition for lack of exhaustion; (2) petitioner's request to  
13 stay be denied; and (3) Judgment be entered dismissing this action without  
14 prejudice.

15 IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the  
16 Report and Recommendation, and the Judgment herein on petitioner and on  
17 counsel for respondent.

18 LET JUDGMENT BE ENTERED ACCORDINGLY.

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20 DATED: June 16, 2009

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23 HONORABLE DAVID O. CARTER  
24 UNITED STATES DISTRICT JUDGE  
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